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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ANDREW DeVOID, Plaintiff and Appellant, v. MICHAEL BROSKOWSKI, as Trustee, etc., Defendant and Respondent.	D073988 (Super. Ct. No. 37-2017-00005718-PR-TR-CTL)

APPEAL from an order of the Superior Court of San Diego County, Julia Craig Kelety, Judge. Reversed and remanded for further proceedings.

Law Offices of Barron E. Ramos and Barron E. Ramos for Plaintiff and Appellant.

Tony Prost for Defendant and Respondent.

I

INTRODUCTION

Grandson appeals from a probate court order denying his petition seeking to recover property removed from a trust created by his paternal Grandparents in 1990 (1990 Trust). At issue is whether a 2004 court order (transmutation order) granting Grandfather's 2003 petition to transmute the 1990 Trust's community property assets into

Grandfather's separate property (transmutation petition) was void because Grandson did not receive notice of the hearing on the petition. The probate court found Grandson should have received notice of the hearing on the transmutation petition, but the lack of notice did not render the transmutation order void.

We conclude the transmutation order is void because Grandfather's failure to provide Grandson with notice of the hearing on the transmutation petition deprived Grandson of due process. We, therefore, reverse the probate court's order denying Grandson's petition and remand the matter for further proceedings.

II

BACKGROUND

A

Grandson's father (Father) was Grandparents' only child and Grandson was Grandparents' only grandchild. Grandson learned about the 1990 Trust sometime in 2000 or 2002. The provisions of the 1990 Trust are not known as none of parties has seen or located a copy of it. However, Grandfather told Grandson if Grandmother were to die, the trust proceeds would go to Grandfather, then to Father, then to Grandson when Grandson turned 25. Grandfather and Grandmother both made similar statements to Grandson's mother.

B

Sometime after Grandparents created the 1990 Trust, Grandmother's health declined. In late 2003, Grandfather filed the transmutation petition seeking an order

under Probate Code[1] section 3100 et seq. authorizing Grandfather to make transactions which would transmute all of the community property assets held in the 1990 Trust into Grandfather's separate property.[2]

The transmutation petition stated the community property assets consisted of Grandparents' primary residence, then valued at $475,000, and five bank accounts, then collectively valued at $86,500. The petition explained Grandmother would likely need to apply for Medi-Cal benefits to cover the cost of custodial care. The purposes of transmuting the assets were to preserve the assets for Grandfather's benefit by preventing them from being subject to Medi-Cal liens and to prevent Grandmother from becoming ineligible for Medi-Cal benefits if Grandfather predeceased her.

The transmutation petition stated Grandmother lacked the capacity to consent to the transmutation. This statement was supported by a letter from Grandmother's physician stating Grandmother "either lacks the mental and/or physical ability to sign her

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1 Further statutory references are also to the Probate Code unless otherwise stated.

2 Section 3100 is in the division relating to guardianship, conservatorship, and other protective proceedings, under the part of the division relating to the management or disposition of community property where a spouse lacks legal capacity, in the chapter relating to proceedings for particular transactions. "A proceeding may be brought pursuant to [section] 3100 et seq. for a court order authorizing a proposed transaction, whether or not joinder or consent of both spouses is required, if both of the following conditions are satisfied: (a) one of the spouses is alleged to lack legal capacity for the proposed transaction, whether or not that spouse has a conservator; and (b) the other spouse either has legal capacity for the proposed transaction or has a conservator. ([§] 3101[, subd.] (a).) Approval of a proposed transaction avoids the need to establish a conservatorship for a spouse lacking legal capacity merely to accomplish that transaction. [Citation.]" (11 Witkin, Summary of Cal. Law (2018) Community Property, § 166 (1).)

name or lacks the ability to understand the significance of any document which she might sign."[3]

The transmutation petition also stated Father was the only relative of Grandmother's within the second degree entitled to notice under section 2581 and Father "waived notice and consents to this proceeding."[4] Although Grandson was 12 years old at the time, a relative in the second degree (§ 13, subd. (b)), and a purported beneficiary of the 1990 Trust (§ 24, subd. (c)), the transmutation petition did not identify Grandson as a person entitled to notice of the hearing on the transmutation petition and Grandson did not receive such notice.

Grandfather lodged a copy of the 1990 Trust and a copy of Grandmother's pour-over will with the transmutation petition. The will is included in the appellate record but the 1990 Trust is not. The will applied only to Grandmother's property not in the 1990 Trust. The will left Grandmother's nontrust property to Grandfather if Grandfather

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[3] The transmutation petition was also supported by a declaration from Grandmother's physician and a letter from a second physician. However, neither document is included in the appellate record.

[4] A petition under section 3100 et seq. must include the names and addresses of "[r]elatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction." (§ 3121, subd. (e)(1).) If the petition affects "estate planning of the spouse who is alleged to lack capacity," the petition must also include "the names and address of the persons identified in Section 2581." (§ 3121, subd. (e)(2).) The persons identified in section 2581 include, "*regardless of age*," known "beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice." (§ 2581, subd. (c), italics added.)

The transmutation references an undescribed attachment ostensibly evidencing Father's waiver and consent. The attachment is not part of the appellate record.

survived Grandmother for 15 days. If Grandfather did not survive Grandmother for 15 days, the will left Grandmother's nontrust property to the trustee of the 1990 Trust. If the 1990 Trust was inoperative, the will left Grandmother's nontrust property to the trustee of a contingency trust that incorporated the terms of the 1990 Trust.

In early 2004, the court granted the transmutation petition and entered the transmutation order authorizing Grandfather to make the requested transactions.

C

Sometime in 2004, Grandfather established a new trust (2004 Trust). Grandmother died the same year. Father died not long after Grandmother. Grandfather died in 2015. In 2017, the nonrelative trustee of the 2004 Trust, who is also the sole beneficiary of the 2004 Trust and Grandfather's other assets, valued the trust proceeds and other assets at approximately $542,689.50.[5]

D

Grandson petitioned under section 850 for an order confirming trust property.[6] Specifically, Grandson sought to recover the assets used to fund the 2004 Trust and return the assets to the 1990 Trust or to the contingency trust referenced in Grandmother's

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5 Grandson is challenging the trustee's beneficiary status in a separate proceeding not at issue in this appeal.

6 Section 850 provides in part: "(a) The following persons may file a petition requesting that the court make an order under this part: [¶] ... [¶] (3) The trustee or any interested person in any of the following cases: [¶] ... [¶] (A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another."

will. Grandson also requested to be appointed trustee of the 1990 Trust or the contingency trust.

The probate court found Grandson was entitled to receive but did not receive notice of the hearing on the transmutation petition. Nonetheless, the court found the lack of notice did not render the transmutation order void and subject to collateral attack because the court had fundamental jurisdiction over the transmutation petition, Grandparents, and their community property assets when the court issued the transmutation order.

The court further found the lack of notice to Grandson did not render the transmutation order voidable because the transmutation order "has long since become final; the time for attacking it has passed; the possibility of any mistake or different result is very speculative; and if there were any defect in the order, it would be virtually impossible to correct at this point." Accordingly, the court declined to set aside the transmutation order and denied Grandson's petition to recover the assets used to fund the 2004 Trust.

III

DISCUSSION

The only question presented in this appeal is whether the transmutation order is void because Grandson did not receive notice of the hearing on the transmutation petition. As this question is a question of law (see *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1328 (*OC Interior*); 49 C.J.S.

(2019) Judgments, § 395), we review it de novo (see *Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127).

An order is void if the court lacked subject matter jurisdiction, the court lacked personal jurisdiction over the parties, or the order violates due process. (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 [70 S.Ct. 652, 94 L.Ed. 865] (*Mullane*); *In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56; *OC Interior*, *supra*, 7 Cal.App.5th at pp. 1330–1331; *State of Arizona ex rel. Arizona Dept. of Revenue v. Yuen* (2009) 179 Cal.App.4th 169, 179; *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933; 49 C.J.S. (2019) Judgments, § 395.) A void order has no legal effect and is subject to collateral attack at any time. (*OC Interior*, *supra*, at p. 1330; *Carr*, at p. 937.)

Here, the court found, the evidence shows, and the parties do not dispute Grandson was required to receive and did not receive notice of the hearing on the transmutation petition. (§ 3131, subd. (c) [any person required to be named in the petition must receive notice of the time and place of the hearing on the petition at least 15 days before hearing]; Cal. Rules of Court, rule 7.51(d) [when a minor must receive notice of a hearing under the Probate Code, the notice generally "must be sent directly to the minor" and a separate copy "must be sent to the person or persons having legal custody of the minor, with whom the minor resides"].)

The lack of notice violated Grandson's right to due process because Grandson's contingent future interest in the 1990 Trust was a protectible property interest (see *Security-First Nat'l Bank v. Rogers* (1958) 51 Cal.2d 24, 30; *Sinclair v. Crabtree* (1931) 211 Cal. 524, 528; *Estate of Sigourney* (2001) 93 Cal.App.4th 593, 603–604) and the lack

of notice deprived him of an opportunity to be heard before the court granted the transmutation petition and extinguished Grandmother's voice in the distribution of community property assets upon her death.[7] "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citations.]" (*Mullane*, *supra*, 339 U.S. at p. 314; accord, *Estate of Sigourney*, at p. 604 [even a party whose property interest is contingent or remote is entitled to due process].) Due process considerations are undoubtedly why the Probate Code expressly required Grandfather to identify and give notice of the hearing on the transmutation petition to known beneficiaries of the 1990 Trust and Grandmother's will, regardless of their age. (§§ 2581, subd. (c), 3121, subd. (e)(2), 3131, subd. (c); *Estate of Davis*, *supra*, 219 Cal.App.3d at p. 668 [the purpose of allowing an interested person to participate in a proceeding under the Probate Code is to ensure the person will be bound by the court's order in the proceeding].) Because Grandfather knew of Grandson's existence at the time Grandfather filed the transmutation petition, Grandfather's failure to provide the requisite notice rendered the transmutation order void. (*County of L.A. v. Soto* (1984) 35 Cal.3d 483, 487; *In re B. G.* (1974) 11 Cal.3d 679, 689; *Gray v. Hall* (1928) 203 Cal. 306, 316;

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[7] Although a nonparty to the proceeding, Grandson was an "interested person." (§ 48, subd. (a)(1).) Once an interested person appears in a proceeding under the Probate Code, the court may permit the interested person to participate in the proceeding. (§ 48, subd. (b); *Estate of Davis* (1990) 219 Cal.App.3d 663, 668 (*Estate of Davis*).)

Estate of Sigourney, at p. 601; *In re Kelvin M.* (1978) 77 Cal.App.3d 396, 402; *Estate of Lacy* (1975) 54 Cal.App.3d 172, 188 (*Estate of Lacy*); *Estate of Reed* (1968) 259 Cal.App.2d 14, 21–22.)

The fact Father may have known of and consented to the transmutation petition does not alter our conclusion. Grandson is not identified in the transmutation petition as a person entitled to notice of the hearing it. Additionally, the documents purportedly evidencing Father's waiver of notice and consent to the transmutation petition are not in the record (see fn. 4, *ante*). Consequently, we have no basis to infer that Father knew Grandson was also entitled to notice or that Father intended to act on Grandson's behalf when he waived notice and consented to the transmutation petition. As *Estate of Lacy*, *supra*, 54 Cal.App.3d 172 explained in a similar context: "A failure to give notice cannot be treated that simplistically. Even though the notice would have gone to the children at the same address as their parents the very fact of separate notice might have been sufficient to suggest, to them if they were of sufficient age, and certainly to their parents, that the children's interests are separate and distinct as remaindermen from those of the [father] as a contingent income beneficiary." (*Id.* at p. 186.)

Conservatorship of O'Connor (1996) 48 Cal.App.4th 1076, upon which the probate court relied, is inapposite because the case did not discuss the holding of *Mullane*, *supra*, 339 U.S. 306 or otherwise address the validity of an order affecting an interested person's property rights obtained in violation of the person's due process rights. "A case is not authority for an issue neither raised nor considered. [Citations.]" (*People v. Wells* (1996) 12 Cal.4th 979, 984, fn. 4.) *Guardianship of Peterson* (1948) 84

Cal.App.2d 541, which predated *Mullane*, *supra*, 339 U.S. 306, is inapposite for the same reason.

IV

DISPOSITION

The order is reversed. The matter is remanded for further proceedings consistent with this opinion. Appellant is awarded his appeal costs.

McCONNELL, P. J.

I CONCUR:

IRION, J.

Dato, J., Dissenting.

The Fourteenth Amendment prohibits a state from depriving a citizen of life, liberty, or property without due process of law. What process is "due" depends on the context (see, e.g., *Board of Curators of University of Missouri v. Horowitz* (1978) 435 U.S. 78, 102), but a corollary of this cherished constitutional principle requires fair notice and an opportunity to be heard before an adverse judgment can be entered against a party in litigation. Indeed, a judgment or order entered in violation of this salutary rule is void and can be collaterally challenged without regard to when it was issued. (See, e.g., *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 488.)

This case tests the scope and limits of the notion that a judgment or order entered without proper notice is void. Here, Grandparents created a revocable trust in 1990 (1990 Trust). In typical fashion, the corpus of the trust was to remain for the benefit of the surviving Grandparent after the death of the first, and would then pass to Father (Grandparents' only son). If, but only if, Father died before the surviving Grandparent, the corpus would pass to Grandson (Father's son).

Due to healthcare issues involving Grandmother that arose after Grandparents created the 1990 Trust, Grandfather concluded that to safeguard the community property in the trust it should be transmuted to his separate property. Unfortunately, when these healthcare issues arose Grandmother was no longer mentally competent to agree to this change. Accordingly, following established procedures, Grandfather sought court approval of the transmutation. The court agreed that the proposal was in Grandparents' mutual best interests and approved the transmutation.

Now 13 years later and following the death first of Father and then Grandfather, Grandson contends that by statute he was entitled to individual personal notice of Grandfather's transmutation request. He maintains that because he did not receive it, the court's order approving the transmutation was void.

Grandson bases this contention on Probate Code section 3131, which specifies who was to receive notice of Grandfather's petition.[1] Subdivision (a) of that statute required service of the petition on Grandmother (the nonpetitioning spouse). Subdivision (c) also requires that "a notice of the time and place of the hearing on the petition [be given] to those persons required to be named in the petition at the addresses set forth in the petition." Those persons include:

"(1) Relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction.

"(2) If the petition is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, ... the names and addresses of the persons identified in Section 2581." (§ 3121, subd. (e).)

Section 2581, subdivision (c) in turn identifies known "beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice." A trust "beneficiary" is defined as "a person who has any present or future interest, vested or contingent." (§ 24, subd. (c).) Grandson was concededly a relative "within the second degree of" Grandmother within the meaning

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1 Further statutory references are to the Probate Code.

of section 3121, subdivision (e)(1). And although his interest was future and contingent, he qualified as a "trust beneficiary" under section 3121, subdivision (e)(2).

It is undisputed that Grandson did not receive individual personal notice of Grandfather's petition. At the same time, there is likewise no dispute that Grandson was neither a party nor even a potential party to the action on the petition. He was not entitled to formal service of process—only notice of the date and time of the hearing. (§ 3131, subd. (c).)[2] And trust beneficiaries have no right to intervene in a transmutation action—only a spouse or a spouse's conservator "may file, or join in, a petition." (§ 3111, subd. (a).) Finally, there is no question that Father as the primary trust beneficiary, who had legal custody of then-12-year-old Grandson, knew about the petition, waived formal notice, and agreed to the transmutation. Grandson concedes this point.

It is tempting to say simply that personal notice to Grandson was statutorily required; personal notice was not received; hence, the judgment is void. But a court order or judgment is void for lack of notice only if the affected party was thereby deprived of a *property interest* such that statutory notice was *constitutionally* required.

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2 In proposing the statutory language, the California Law Revision Commission explained that relatives like Grandson should not be entitled to a copy of the petition for privacy reasons: "The competent spouse often objects to being required to send a copy of the petition to his or her in-laws, thus divulging the details of family finances and property." (Recommendation: New Probate Code (Dec. 1989) 20 Cal. Law Revision Com. Rep. (1990) at p. 1045 & fn. 55 [Notice in proceeding for particular community property transaction.].) Accordingly, "[a] family member who wants the details of the transaction may refer to the petition in the court file." (*Id.* at p. 1045; see *Estate of Joseph* (1998) 17 Cal.4th 203, 216 [courts give " 'substantial weight' " to the Law Revision Commission's understanding of a provision it proposed].)

Statutory notice "cannot be equated" with due process notice requirements. (*Estate of Reed* (1968) 259 Cal.App.2d 14, 20; see *Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1090 [failure to provide statutorily required notice, hearing or investigation did not render conservatorship order void].)

Here, Grandson had no property right he stood to lose as a result of Grandfather's transmutation petition. Grandparents had the unfettered right to change and/or revoke the 1990 Trust. Neither Grandson, who was merely a contingent beneficiary, nor even Father, the primary beneficiary, had any ability to object. The only reason there was a court proceeding at all was due to Grandmother's mental incapacity. Court intervention was required simply to protect Grandmother, and the court properly concluded that her interests were best served by the transmutation. No objection by Grandson as a 12-year-old contingent beneficiary would have changed that.[3]

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[3] Section 48 does not change the analysis. Subdivision (a) defines "interested person" to include beneficiaries having an interest in an estate that may be affected by a probate proceeding. (§ 48, subd. (a)(1); *Estate of Davis* (1990) 219 Cal.App.3d 663, 668.) "Subdivision (b) allows the court to determine the sufficiency of that party's interest *for the purposes of each proceeding conducted*. Thus, a party may qualify as an interested person entitled to participate for purposes of one proceeding but not for another." (*Davis*, p. 668, italics added.) The purpose of the statute is to allow persons who would be *bound* by various orders in probate proceedings to protect their rights. (*Ibid.*) Thus, a surety who would be bound by an order concerning a creditor's claim against a decedent's estate was properly allowed to participate under section 48. (*Id.* at pp. 668−669.)

Here, the nature of the proceeding is a request for court approval of a transmutation of community property. But for Grandmother's incapacity, Grandparents alone could make the decision, even if it adversely affected Grandson's contingent trust interest. The court's role here was not to *bind* trust beneficiaries, but rather to evaluate whether the transaction served Grandmother's interest. (§ 3144, subd. (a)(4).) Although probate courts have "flexibility in determining whether to permit a party to participate as

A similar issue was presented in *Guardianship of Peterson* (1948) 84 Cal.App.2d 541 (*Peterson*), a case not cited by the parties. There a nephew filed a petition seeking to be appointed as guardian for his allegedly incompetent aunt, Cora Peterson. (*Id.* at pp. 543–544.) The court issued an order to show cause and served a copy on Peterson, who filed an answer without challenging the failure to provide notice to her relatives "within the second degree" as required by statute. (*Ibid.*)[4] On appeal, however, Peterson argued that the failure to comply with formal statutory notice requirements deprived the court of jurisdiction to appoint a guardian. (*Id.* at p. 543.) The appellate court disagreed: "A holding that a statutory requirement as to the giving of notice to an alleged incompetent is a prerequisite to the vesting of jurisdiction is not synonymous with a holding that the following requirements of section 1461 of the Probate Code are jurisdictional: (1) that the petition set forth 'the names and residences, so far as they are known to the petitioner, of the relatives of the alleged insane or incompetent person within the second degree residing in this State'; (2) that 'notice of the nature of the

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an interested party" (*Estate of Sobol* (2014) 225 Cal.App.4th 771, 782), I do not believe Grandson would qualify as an "interested person" in *this* proceeding.

4 Former section 1461 provided in relevant part: "Any relative or friend may file a verified petition alleging that a person is insane or incompetent, and setting forth the names and residences, so far as they are known to the petitioner, of the relatives of the alleged insane or incompetent person within the second degree residing in this State; notice of the nature of the proceedings and of the time and place of the hearing shall be mailed at least five (5) days before such hearing date to each of such relatives. Any relative or friend of the alleged insane or incompetent person may appear and oppose the petition." (Stats. 1943, ch. 473, § 1, p. 2005.)

proceedings and of the time and place of the hearings shall be mailed ... to each of such relatives'; ... ." (*Ibid*.)

The court concluded that "jurisdiction was regularly obtained by the trial court" notwithstanding its failure to comply with statutory notice requirements to relatives of the allegedly incompetent person under the Probate Code.[5] (*Id.* at p. 544.) Similarly here, the trial court acquired fundamental jurisdiction with proper service of the petition on Grandmother.

The majority opinion cites *Estate of Sigourney* (2001) 93 Cal.App.4th 593, 604 (*Sigourney*) for the proposition that "even a party whose property interest is contingent or remote is entitled to due process." (Maj. opn., *ante*, p. 8.) I agree. But the facts of *Sigourney* also demonstrate the limits of that proposition. *Sigourney* concerned the terms of a charitable trust. As created by the trustor, the trust had two designated cotrustees—one named individual (James D. Devine) and the Treasurer of the American Psychoanalytic Association (APA). Seven months after the death of the trustor, the current APA Treasurer decided to step down, and two candidates ran in an election to replace him. The executor of the trustor's estate filed a petition to amend the trust terms, including proposed changes in how a replacement cotrustee would be selected. Rather

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5 The court went on to explain that Peterson was not prejudiced by the lack of notice to her relatives because the sister who should have been notified died before the first hearing. (*Peterson*, *supra*, 84 Cal.App.2d at p. 544.) Here, there was likewise no prejudice because Grandson, as a potential 1990 Trust beneficiary, had no legitimate basis to object to Grandfather's petition. And even had he tried to express some objection, it seems highly unlikely his father and legal guardian (who expressly declined to object) would have allowed him to do so or that the court would have entertained it.

than limit the cotrustee to the APA Treasurer, the petition sought to permit Devine to select someone not associated with the APA. (*Sigourney*, at pp. 596–598.)

The petition was not served on the APA or either of the two candidates. Although the trial court allowed the amendment, its validity was later challenged by the APA based on lack of notice. The Court of Appeal held that the rights and powers of the APA under the original trust terms—although intangible—were sufficient to constitute a property interest protected by the Fourteenth Amendment. (*Sigourney*, *supra*, 93 Cal.App.4th at p. 604.) Changing the terms without notice to the APA amounted to deprivation of a property interest without due process of law.

In *Sigourney*, the direct and primary effect of the proposed amendment was adverse to the interests of the APA and the two candidates for Treasurer. The executor's petition sought to minimize or potentially eliminate the role of the APA in the selection of a successor cotrustee. Even if the APA's interest could be characterized as in some sense contingent or remote, it was directly affected by the proposed amendments.[6] In this case, however, Grandson had no primary or direct interest in the transmutation

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6 *Sigourney* cites the seminal United States Supreme Court decision in *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306 for the principle that "even remote interests are entitled to a measure of due process." (*Sigourney*, *supra*, 93 Cal.App.4th at p. 604.) *Mullane* concerned application of a state law allowing small trusts and estates to be pooled into a common fund to spread risk and reduce expenses. The common trustee sought court approval of a trust accounting, including an award of fees, providing only notice by publication to all beneficiaries. (339 U.S. at p. 313.) As in *Sigourney* and unlike this case, the petition in *Mullane* that triggered a notice requirement involved the particulars of trust administration, and trust beneficiaries were the primarily affected parties.

proceedings, which were focused on *Grandmother*'s best interests. His legitimate role (and Father's role) in the proceedings, if any, was not as a trust beneficiary safeguarding his property interest, but rather as family-member witnesses to Grandmother's condition, needs and desires.

A judgment or order is only void if the court lacked jurisdiction in the fundamental sense. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) Here, although the statute may have required notice to Grandson, the due process clause of the Fourteenth Amendment did not because the transmutation petition did not deprive him of any property right. Thus, because the transmutation order was merely voidable and not void, I believe the probate court was correct when it rejected Grandson's collateral attack some 13 years later. I would affirm.

DATO, J.